

1 **WO**

2
3
4
5
6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**
8

9 United States of America,
10 Plaintiff,

11 v.

12 Alex Javier Medina-Penuelas,
13 Defendant.
14

No. CR-24-00428-001-PHX-DWL
ORDER

15 Pending before the Court is a “motion to compel disclosure of identity of
16 confidential source” filed by Defendant Alex Javier Medina-Penuelas (“Medina-
17 Penuelas”). (Doc. 32.)¹ For the reasons that follow, the motion is denied.

18 **RELEVANT BACKGROUND**

19 In February 2024, Medina-Penuelas and a co-defendant, Hugo Armando Higuera-
20 Acosta (“Higuera-Acosta”), were arrested and charged with drug-related offenses. (Doc.
21 1.) According to the complaint, the underlying investigation began when a confidential
22 source (“CS”), who was “working for financial benefits” and had previously “been
23 involved [in] numerous different operations, which have led to the seizure of distribution
24 quantities of methamphetamine, cocaine, heroin, fentanyl powder, counterfeit M30
25 fentanyl pills, and proceeds believed to be generated through the sale of controlled
26 substances,” advised law enforcement officials that a source of supply in Mexico was
27 attempting to distribute 35 pounds of methamphetamine. (Doc. 1 ¶ 4.) “To facilitate the

28 ¹ Medina-Penuelas’s request for oral argument is denied because the issues are fully
briefed and argument would not aid the decisional process.

1 methamphetamine transaction, the [source of supply] provided the CS with the telephone
2 number of a local Phoenix-based drug trafficker. Shortly thereafter, the local Phoenix-
3 based drug trafficker, later identified as [Higuera-Acosta] contacted the CS to consummate
4 the methamphetamine transaction.” (*Id.* ¶ 5.) Eventually, Higuera-Acosta “provided the
5 CS an address along South 19th Avenue and West Buckeye Road in Phoenix, Arizona to
6 conduct the methamphetamine transaction.” (*Id.* ¶ 6.)

7 Law enforcement officials subsequently observed Higuera-Acosta arrive at the
8 proposed meeting location in a red Kia Spectra being driven by Medina-Penuelas. (*Id.*
9 ¶¶ 8-10.) Soon afterward, law enforcement officials observed Higuera-Acosta get out of
10 the Kia Spectra “with a bag and place[] the bag on the passenger’s side rear seat of the
11 CS’[s] vehicle.” (*Id.* ¶ 9.)

12 After making these observations, law enforcement officials conducted a traffic stop
13 of the Kia Spectra and arrested Higuera-Acosta and Medina-Penuelas. (*Id.* ¶ 10.) During
14 a search incident to arrest of Medina-Penuelas, law enforcement officials discovered bags
15 containing suspected methamphetamine as well as suspected fentanyl pills. (*Id.* ¶ 13.) Law
16 enforcement officials also found suspected methamphetamine in the bag that had been
17 placed in the CS’s car (*id.* ¶ 11) and in a bag under the front passenger seat of the Kia
18 Spectra (*id.* ¶ 12). During post-arrest interviews, both Defendants waived their *Miranda*
19 rights and “admitted to being in the arrest location to participate in a methamphetamine
20 transaction.” (*Id.* ¶ 15.)

21 On March 12, 2024, the grand jury returned an indictment that charged both
22 Defendants with the crimes of conspiracy to distribute methamphetamine and possession
23 of methamphetamine with intent to distribute and also charged Medina-Penuelas with the
24 crime of possession of fentanyl with intent to distribute. (Doc. 12.)

25 On October 13, 2024, Medina-Penuelas filed the pending motion for disclosure of
26 the CS’s identity. (Doc. 32.)

27 On October 25, 2024, the government filed a response. (Doc. 38.)

28 On October 31, 2024, Medina-Penuelas filed a reply. (Doc. 39.)

DISCUSSION

I. The Parties' Arguments

Medina-Penuelas asks the Court to “order the government to disclose the identity of the [CS] that was used in this case, along with other materials that bear upon his/her credibility.” (Doc. 32 at 1.) According to Medina-Penuelas, “[t]his request is made because the CS participated in setting up the drug deal in this case,” “was also present when defendant and his co-defendant were arrested,” and “is therefore a material witness to the facts that gave rise to the charges against the defendant and co-defendant. Furthermore, disclosure of his/her identity is likely to be helpful to possible trial defenses.” (*Id.* at 1-2.) More specifically, Medina-Penuelas contends that he “is likely to raise the defenses of lack of knowledge or involvement in a conspiracy to sell methamphetamine or Fentanyl. He will likely deny knowing that there were drugs in the gray bag transferred by the co-defendant to the CS’s vehicle, and as to the 800 mg of methamphetamine found underneath the front passenger’s seat where the co-defendant had been seated. Furthermore, because the CS in this case only appeared to have spoken with the co-defendant (Higuera-Acosta) prior to and during the drug transaction, it is likely that the CS did not even know Mr. Medina-Penuelas prior to this incident. Consequently, he likely won’t be able to identify him as a drug dealer or as anyone otherwise involved in criminal activity, and he will likely testify that he had never spoken with Mr. Medina-Penuelas and did not conspire with him to sell narcotics. This information distances Mr. Medina-Penuelas from the alleged conspiracy, thereby increasing his odds of prevailing at trial, and it reduces his exposure to ‘relevant conduct’ during sentencing.” (*Id.* at 8-9.) As authority for this request, Medina-Penuelas cites *Roviaro v. United States*, 353 U.S. 53 (1957), and the Fifth Amendment. (*Id.* at 2.) Medina-Penuelas also identifies various categories of information related to the CS to which he believes he is entitled, including the CS’s name, date of birth, and most recent address; various categories of information related to the CS’s cooperation history and truthfulness; and “[a]ll other disclosure required by *Brady* and *Giglio*.” (*Id.* at 9-10.) Finally, Medina-Penuelas argues that the Court must, at a minimum, hold an *in camera*

1 hearing to obtain more information from the government about the CS. (*Id.* at 5, 11.)

2 The government opposes Medina-Penuelas's disclosure request. (Doc. 38.) The
3 government argues that "[g]iven that the CS will be a necessary witness in this trial, the
4 government intends to subpoena the CS, negating the need for the defendant to receive any
5 identifying location information. Because the government anticipates calling the CS as a
6 significant witness at trial, the government will produce to the defense the following:

7 1. The CS'[s] name (excluding location and other personally identifiable information).
8 2. Any benefits the CS received from cooperation, including payment, gifts, reduction in
9 charges, immigration benefits, etc. 3. The number of the cases in which the government
10 has used the CS to provide information. 4. Any information regarding statements of the
11 CS in the instant case. 5. Any negative information regarding the CS'[s] conduct while
12 operating in a confidential capacity for the government. 6. Any negative information
13 impacting the CS'[s] veracity, bias, or character for truthfulness." (*Id.* at 4.) The
14 government also contends it should not be required to provide some of the additional
15 categories of information identified in Medina-Penuelas's motion. For example, the
16 government opposes Medina-Penuelas's request for the CS's date of birth and current
17 address because the disclosure of such information could "place the CS'[s] life in jeopardy
18 from retaliation. Based on the numerous operations that the CS has conducted with law
19 enforcement officers, targeting many criminal organizations, disclosure of the CS'[s]
20 personally identifiable information should be tailored to protect the CS wherever possible.
21 Because the government intends to subpoena and call the CS as a witness, personally
22 identifiable information such as the CS'[s] address is not necessary in order for the
23 defendant to prepare for trial." (*Id.* at 4.) The government also opposes Medina-Penuelas's
24 request for any statement the CS has ever made to law enforcement, arguing that Medina-
25 Penuelas is only entitled to discovery of the CS's statements to law enforcement regarding
26 this case and any statements in other cases that evince untruthfulness. (*Id.* at 4-5.) The
27 government concludes: "The government intends to comply with its Constitutional and
28 statutory discovery obligations, including, but not limited to, Rule 16 and the Jencks Act.

1 The government intends to disclose all required information related to the CS no later than
 2 two weeks prior to the final trial date.” (*Id.* at 5.)

3 In a brief reply, Medina-Penuelas argues that “[w]hile the Government’s candor and
 4 willingness to meet [its discovery] obligations is commendable, it fails to recognize that
 5 regarding the disclosure of information relevant to a Confidential Source that it is the
 6 Court’s duty, not the Government[’]s, to hold an *in camera* hearing to determine the scope
 7 of the information that should be disclosed.” (Doc. 39 at 2.)

8 II. Analysis

9 Medina-Penuelas’s request for relief under *Roviaro v. United States*, 353 U.S. 53
 10 (1957), lacks merit because the government has now represented that it will call the CS as
 11 a witness at trial and disclose the CS’s identity (as well as make all other disclosures related
 12 to the CS that are required by law) at least two weeks before the trial date.

13 “The issue of evidentiary law in *Roviaro* was whether (or when) the Government is
 14 obliged to reveal the identity of an undercover informer the Government does *not* call as a
 15 trial witness.” *Banks v. Dretke*, 540 U.S. 668, 697 (2004). Thus, the government may
 16 moot a *Roviaro*-based disclosure request by committing to call the CS as a witness at trial
 17 and to meet all of its statutory and constitutional discovery obligations related to the CS.

18 As one court recently explained:

19 The Magistrate Judge concluded she was not required to conduct this analysis
 20 because the United States has said it will call the SOI and CS at trial and
 21 *Roviaro* only applies when the United States does not intend to call the
 22 confidential informant. . . . Defendant Ruiz says the Magistrate Judge was
 23 wrong to reach this conclusion because . . . the core principle from *Roviaro*
 24 that a defendant must be given information (including an informant’s
 25 identity) that is necessary to the preparation of his or her defense applies even
 26 when the United States plans to call the informant. This Court agrees with
 27 the Magistrate Judge and the long list of decisions she cited in concluding
 28 Defendants’ reliance on *Roviaro* is misplaced in the light of the United
 States’s representation that it will call the CS and SOI at trial and thus will
 produce identifying information and related Jenks Act, Brady, and Giglio
 materials before trial. . . . [*Roviaro*] involved the failure to disclose the names
 of a confidential informant who did not testify at trial. And that was
 important to the Supreme Court’s decision. . . . By not calling the informant

1 as a witness and withholding the informant's name, the United States
 2 prevented the defendant from presenting [the informant's] testimony to the
 3 jury and, possibly, using the witness to contradict the government's
 4 witnesses. The United States essentially inoculated its case against any
 5 attack based on the informant's testimony. That is not possible here. The
 6 United States will call the SOI and CS as witnesses, ensuring Defendants will
 7 have an opportunity to cross-examine them. So the reasoning of *Roviaro* is
 8 inapplicable. This case . . . remains squarely within the well-settled rule that
 9 a criminal defendant has no absolute right to a list of the government's
 10 witnesses in advance of trial. If the United States reneges on its
 representation that it will call the witnesses, the Court can take appropriate
 action, including continuing the trial, excluding other evidence, or even
 granting a mistrial. But, until then, the United States is entitled to the
 acceptance of its representation.

11 *United States v. Ruiz*, 2023 WL 3562970, *3-4 (N.D. Ga. 2023) (cleaned up). Many other
 12 courts have reached the same conclusion. *See, e.g., United States v. Valdovinos-Tafolla*,
 13 2024 WL 2992502, *2 (N.D. Ga. 2024) (“[T]he early disclosure Defendant requests is not
 14 warranted. Although *Roviaro* stands for the proposition that the Government’s privilege
 15 to withhold the identity of confidential informants must yield in certain instances, *Roviaro*
 16 does not apply in this case because the Government intends to call the informant to testify
 17 at trial.”); *United States v. Alfaro*, 2015 WL 1042115, *4 (W.D. Ky. 2015) (“Alfaro next
 18 asks the Court to enter an order [under *Roviaro*] requiring the Government to identify any
 19 informant who witnessed or participated in the alleged criminal activity as charged in the
 20 indictment. . . . The Government states that . . . if an informant exists, he or she will be
 21 called to testify at trial and will be identified as an informant at that time. In light of the
 22 Government’s response, the motion will be DENIED as moot.”) (citations omitted); *United*
 23 *States v. Pimentel*, 2001 WL 185086, *2-3 (E.D.N.Y. 2001) (“[D]isclosure of the
 24 confidential informant’s identity is not required [under *Roviaro*] if the Government will
 25 call the informant as a witness at trial. . . . [T]he Government asserts that they expect to
 26 call the informants as witnesses at trial. Therefore, this Court finds that there is no need
 27 disclose the identity of the informants because they will be witnesses at trial.”) (citations
 28 omitted); *United States v. Almodovar*, 1996 WL 700267, *8 (D. Del. 1996) (“[T]he identity

1 of an informant, who was a participant in the transaction, need not be released before trial
 2 if the Government indicates its intention to call the informant as a witness at trial and if the
 3 Government provides the defendant with the necessary impeachment information. As
 4 applied to the facts of this case, defendant's [*Roviaro*] motion must be denied.") (citations
 5 omitted); *United States v. Beckett*, 889 F. Supp. 152, 155 (D. Del. 1995) ("[I]n the cases
 6 cited by the defendants [including *Roviaro*] the informants were not going to be called by
 7 the government to testify nor was the government going to provide any impeachment
 8 information to defendants. Thus, defendants were precluded from examining the
 9 informants in any form, and the only other witness to the transaction was a government
 10 agent. Such is not the case at bar. The government has indicated that it will call these
 11 witnesses at trial and that it will provide the defendants with appropriate impeachment
 12 material . . . one week prior to trial. Thus, unlike in *Roviaro* . . . defendants will have an
 13 opportunity to examine the informants in open court and impeach said witnesses."); *United*
 14 *States v. Zuluaga*, 651 F. Supp. 746, 752 (E.D.N.Y. 1986) ("[T]he government has
 15 indicated that it will call the informant as a witness and that defendants will receive § 3500
 16 material before trial. In these circumstances, advance identification of the informant is not
 17 warranted.").

18 For related reasons, the Court also disagrees with Medina-Penuelas's contention that
 19 it must hold an *in camera* hearing right now to obtain more information from the
 20 government about the CS. True, the Ninth Circuit has held that "[t]he district court, in
 21 exercising its discretion on whether to conduct an *in camera* hearing on the defendant's
 22 need for a confidential informant's identity or testimony, must hold such a hearing where
 23 the defendant has shown that the information would be 'relevant and helpful.'" *United*
 24 *States v. Amador-Galvan*, 9 F.3d 1414, 1417 (9th Cir. 1993). But the Court construes that
 25 requirement as applicable only where, as in *Roviaro* and *Amador-Galvan* (but not here),
 26 the government is attempting to withhold the identity of a non-testifying CS. *Amador-*
 27 *Galvan*, 9 F.3d at 1415 ("This opinion addresses the district court's refusal to disclose the
 28 identities of *non-witness* confidential informants . . .") (emphasis added). Because, as


1 noted, the government has now committed to calling the CS as a witness at trial and to
2 making all necessary disclosures (including disclosure of the CS's identity) at least two
3 weeks before trial, it is unnecessary to hold an *in camera* hearing at this juncture—such a
4 hearing would simply result in the Court obtaining a preview of the information that will
5 later be disclosed to Medina-Penuelas.

6 Finally, the Court wishes to clarify that to the extent Medina-Penuelas believes he
7 is entitled, on some basis other than *Roviaro*, to any discrete categories of information
8 related to the CS that go beyond the six categories of information the government has now
9 committed to disclosing (Doc. 38 at 4), this ruling is without prejudice to Medina-
10 Penuelas's ability to file a renewed motion for disclosure as to those specific categories of
11 information.

12 Accordingly,

13 **IT IS ORDERED** that Medina-Penuelas's *Roviaro*-based motion for disclosure
14 (Doc. 32) is **denied**.

15 Dated this 8th day of November, 2024.

16
17
18 
19 _____
20 Dominic W. Lanza
21 United States District Judge
22
23
24
25
26
27
28